

SEP 10 11 34 AM '99

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 99-170  
Table of Allotments, ) RM-9545  
FM Broadcast Stations. )  
(Oceanside and Encinitas, California) )

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: September 1, 1999**

**Released: September 10, 1999**

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 14 FCC Rcd 7472 (1999), issued in response to a petition for rule making filed on behalf of Compass Radio of San Diego, Inc. ("petitioner"), licensee of Station KXST, Channel 271B, Oceanside, California, proposing the reallocation of Channel 271B to Encinitas, California, as that community's first local transmission service, and modification of the license for Station KXST as requested. Petitioner filed supporting comments in response to the Notice. No other comments were received. For the reasons discussed below, we are reallocating Channel 271B from Oceanside to Encinitas and modifying the license of Station KXST to specify Encinitas, California, as its community of license.

**Background**

2. As stated in the Notice, this proposal is filed pursuant to Section 1.420(i) of the Commission's Rules to enable the petitioner to provide a first local transmission service to Encinitas, an incorporated community containing a population of 55,386.<sup>1</sup> See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part 5 FCC Rcd 7094 (1990). In support of the proposal, petitioner asserts that the reallocation would result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982),<sup>2</sup> as Encinitas would receive its first local service (priority three), whereas Oceanside will continue to receive local service provided by full-time non-commercial AM broadcast Station KKSM (priority four). The Notice also advised that Station KXST presently provides 70 dBu coverage to Encinitas from its existing site at Oceanside at coordinates 33-06-40 NL and 117-12-05 WL, and that approximately

<sup>1</sup>Population figures reported herein were taken from the 1990 U.S. Census Reports.

<sup>2</sup>The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

twenty-four full-time AM and FM broadcast reception services are currently received at Oceanside. Further, as no change in the transmitter site for Station KXST was requested in conjunction with the reallocation proposal, there will be no gain or loss in coverage or population, and no white or gray areas are involved.<sup>3</sup>

3. The Notice also recognized that Oceanside and Encinitas are both located in the San Diego Urbanized Area. Station KXST presently provides a 70 dBu signal over 57.3% of the urbanized area. As no change in transmitter site is proposed, the petitioner was not required to submit a Tuck analysis to demonstrate that Encinitas is sufficiently independent of the San Diego Urbanized Area to merit a first local transmission service preference.<sup>4</sup> See Notice at para. 7.<sup>5</sup>

4. The Notice also advised that Station KXST, which is a pre-1964 grandfathered authorization, is shortspaced to Station KGB-FM, Channel 268B, San Diego, California, and Station KSCA, Channel 270B, Glendale, California, both of which were also authorized prior to 1964. Since the requested reallocation to Encinitas does not involve a transmitter site change, the Notice questioned whether the policy set forth in Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992), should be continued and whether it should be extended to post-1964 FM stations that are not now in conformity with the current minimum distance separation requirements set forth in Section 73.207(b) of the Commission's Rules.<sup>6</sup> See Notice at para. 6. Under Newnan, the Commission permitted a grandfathered facility authorized pursuant to Section 73.213 of the Rules (pre-1964) that did not meet the current minimum distance separation requirements of Section 73.207(b) to relocate to a new community as no change to the technical facilities was involved. In taking that action, we acknowledged that we were creating a new short-spaced allotment in contravention of Section 73.207 of the Commission's Rules. However, our rationale for that action was that grandfathered FM stations that were in compliance with the Rules when authorized should be afforded the same opportunity to change their community of license as other stations authorized in conformity with our Rules.

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<sup>3</sup>For FM allotment purposes, a white area is a geographical area that is not served by any full-time aural service and a gray area is one that is served by only one full-time aural service.

<sup>4</sup>See Huntington Broadcasting Co. v. F.C.C., 192 F.2d 33 (D.C. Cir. 1951), RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

<sup>5</sup>Nevertheless, petitioner provided a profile of Encinitas to reflect that it is governed by a five-member City Council and a city manager, and has its own complement of community services including fire, water and sewer departments, hospitals, library services, public and private schools, churches, a host of commercial establishments, civic and social organizations, a visitors center, public beaches, parks, and a botanical garden.

<sup>6</sup>The request for comments was directed also to three earlier proceedings [Fremont and Holton, Michigan, MM Docket No. 98-180, (DA 98-1956, released October 2, 1998); Kileen and Cedar Park, Texas, MM Docket No. 98-176 (DA 98-1939, released September 25, 1998); and Sugar Hill and Toccoa, Georgia, MM Docket No. 98-162 (DA 98-1785, released September 11, 1998)] involving reallocation requests by existing grandfathered facilities.

5. In response to the Notice, petitioner urges the Commission to sustain the policy concerning reallocations for grandfathered short-spaced stations set forth in Newnan. Petitioner maintains that as Station KXST was in compliance with the Commission's Rules when authorized, it should be permitted the identical opportunity to benefit by changing its community of license as any other station authorized in conformity with the Commission's Rules. With respect to the existing third-adjacent channel short-spacing to Station KGB-FM, Channel 268B, San Diego, California, petitioner advises that the Commission eliminated the distance separation and interference protection requirements with respect to second and third adjacent channel grandfathered stations that have existed continuously since November 16, 1964. See Grandfathered Short-Spaced FM Stations, 12 FCC Rcd 11840. See also, § 73.213(a)(4) of the Commission's Rules. Therefore, petitioner asserts that the short-spacing that exists between Station KXST and Station KGB-FM should not be any hindrance to its reallocation request. As to the existing short-spacing to Station KSCA, Channel 270B, Glendale, California, petitioner urges that as its proposal does not involve any change in Station KXST's technical facilities, it is consistent with the requirements set forth in Newnan,<sup>7</sup> as no transmitter site change is proposed and it will not exacerbate any existing short-spacings or create new ones. Therefore, petitioner urges that the reallocation of Channel 271B to Encinitas will result in a preferential arrangement of allotments, and will fulfill the goal of a "fair, efficient, and equitable distribution of radio service" pursuant to the requirements of § 307(b) of the Communications Act of 1934, as amended. 47 U.S.C. § 307(b).

6. Based upon the information presented, we believe the public interest would be served by reallocating Channel 271B from Oceanside to Encinitas, California. Our decision is premised on the fact that the reallocation of Channel 271B to Encinitas represents a preferential arrangement of allotments pursuant to the Commission's *Revision of FM Assignment Policies and Procedures*, *supra*. As no change of the transmitter site for Station KXST is proposed, the first two allotment priorities are not applicable to this proposal. Encinitas will be provided with its first local aural transmission service (priority three) and is favored over retaining Channel 271B at Oceanside which will continue to receive local transmission service (priority four) provided by full-time noncommercial Station KKSM(AM). Additionally, the reallocation of Channel 271B to Encinitas will not dilute the current level of twenty-four full-time AM and FM broadcast reception services received at Oceanside. Moreover, as no technical changes are proposed for Station KXST, there will be no increase in interference potential to other stations. As Station KXST can provide a 70 dBu signal over Encinitas from its present site, adoption of this proposal will not effect existing grandfathered short spacings and no new short spacings will result. Therefore, in accordance with its representations in this allotment proceeding, petitioner is expected to file a minor change application (Form 301) for a construction permit specifying Encinitas as its community of license from its currently authorized site at Oceanside. This will

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<sup>7</sup>Petitioner provided a summary of the comments filed in the earlier referenced pending rule making proceedings supporting retention of the Newnan policy for pre-1964 grandfathered stations. See footnote 6, *supra*. However, as this proceeding involves pre-1964 grandfathered facilities only, we are not addressing herein whether the Newnan policy should be extended to post-1964 grandfathered FM stations.

ensure that the integrity of the FM Band and the listening public will not be compromised by the grant of this proposal. In light of the foregoing, and in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station KXST to specify Encinitas, California, as its community of license.

7. Channel 271B can be allotted to Encinitas utilizing the petitioner's currently licensed site at coordinates 33-06-40 NL and 117-12-05 WL. Although Encinitas is located within 320 kilometers (199 miles) of the U.S.-Mexico border, it was not necessary to request Mexican concurrence as the reallocation involves no site change for Station KXST. However, as a result of our decision herein, we will notify the Mexican government of the change to the Table of Allotments to reflect the deletion of Channel 271B at Oceanside and its reallocation to Encinitas, California.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 25, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Encinitas, California	271B
Oceanside, California	--

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Compass Radio of San Diego, Inc. for Station KXST, Channel 271B, Oceanside, California, IS MODIFIED to specify operation on Channel 271B at Encinitas, California, in lieu of Oceanside, California, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility at its currently authorized site at coordinates 33-06-40 NL and 117-12-05 WL.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and,
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Compass Radio of San Diego, Inc., licensee of Station KXST, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license at Encinitas, California.

11. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Order to the following: Compass Radio of San Diego, Inc., 9416 Mission Gorge Road, Santee, CA 92071.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau